INDEX

	Page
QUESTIONS PRESENTED	6
STATEMENT OF THE CASE	7
CONCLUSION	11
PROOF OF SERVICE	12

IN THE

SUPREME COURT OF THE UNITED STATES

SEASIDE PROPERTIES, INC.,
a Florida corporation,

Appellant,

vs.

STATE ROAD DEPARTMENT OF FLORIDA,

Appellee.

Appeal from the Third District Court of Appeal of Florida.

JURISDICTIONAL STATEMENT

COMES NOW the Appellant, SEASIDE PROPERTIES, INC., by and through its undersigned attorney and presents its Jurisdictional Statement pursuant to Rule 15 of the Rules of the Supreme Court of the United States and says:

1. (a) Appended hereto is the opinion rendered in the Third District Court of Appeal of Florida; and the Orders of the Supreme Court of Florida pertaining to the case at bar and reported at 190, So. 2nd 392.

1. (b) The grounds, upon which the jurisdiction of this Court is invoked, are: (1) the validity of a Florida

Statute which is repugnant to the United States Constitution; (2) the violation of the Appellant's constitutional rights as guaranteed by the Fifth and Fourteenth Amendments.

1. (c) The pertinent and material Orders and opinions in this case are hereinafter set forth in their chronological order:

(1). *August 15, 1961* — Second Amended Bill of Complaint for Inverse Condemnation filed

(2). *October 28, 1964* — Final Decree of Circuit Court denying just compensation to Plaintiff (Appellant)

(3). *November 9, 1964* — Petition for Re-Hearing in Circuit Court

(4). *February 23, 1965* — Order Denying Re-Hearing in Circuit Court

(5). *April 23, 1965* — Notice of Appeal to Third District Court of Appeal

(6). *April 27, 1965* — Assignment of Error filed in Third District Court of Appeal

(7). *September 27, 1966* — Opinion of Third District Court of Appeal affirming Circuit Court Upholding Florida Statute 337.31

(8). *October 12, 1966* — Petition for Re-Hearing filed in Third District Court of Appeal

(9). *October 20, 1966* — Third District Court of Appeal Order Denying Re-Hearing

(10). *December 19, 1966* — Petition for Writ of Certiorari filed in the Supreme Court of Florida

(11). *April 21, 1967* — Order from Supreme Court of Florida Denying Certiorari

(12). *May 5, 1967* — Petition for Re-Hearing filed in Supreme Court of Florida

(13). *May 25, 1967* — Supreme Court of Florida Order Denying Re-Hearing

(14). *August 14, 1967* — Notice of Appeal to the Supreme Court of Florida filed in Third District Court of Appeal of Florida

1. (d) That the statutory provision, which your Appellant believes confers jurisdiction in the Supreme Court of the United States is Title 28, USC Section 1257 (2). The Federal questions involved here are substantial since the State Statute involved is repugnant to the Federal Constitution and affects all of the citizens of the State of Florida.

1. (e) The cases supporting the Appellant's position are so numerous that it would be an unreasonable burden upon this Court to cite each and every case on this point of law and therefore, the following cases are cited because of their range of issues, which, are included in the case at bar:

Foster vs. City of Detroit, 254 F. Supp., 655, 661 (1966)

DeSalvo vs. Arkansas - Louisiana Gas Co., 239, F. Supp. 312, 316 (1965)

Gideon vs. Tuscbay Properties, Inc., 314 F. 2d., 445 CCA 5th

Pocock vs. Town of Medley (Fla) 89, So. 2d., 162

Kohl vs. U. S., 91 US, 372, 23 L. Ed., 449, 451

McCoy vs. Union Elevated RR, 247 US, 354, 38, S. Ct., 504, 62 L. Ed., 1156, 1166

Walker vs. City of Hutchingson, 352, US, 112, 77 S. Ct., 200, 1 L. Ed. 2d, 178

Collins vs. City of Witchita, (1955), 225 F. 2d., 132 Cert. Den. 350 US 886, 76 S. Ct. 140, 100 L. Ed. 672

Paradise Prairie Land Co., vs. U. S., 212 F. 2d., 170 CCA 5th, 1954

Russian Volunteer Fleet vs. U. S., 282 US 481, 51 S. Ct., 229, 75 L. Ed. 473

Bragg vs. Weaver, 251 US 57, 40 S. Ct., 62 64 L. Ed., 135, 138

Appleby vs. City of Buffalo, 221 US, 524, 31 S. Ct., 699, 55 L. Ed., 838

Chicago Railroad Co., vs. Illinois, 200 US, 561, 26 S. Ct., 341, 50 L. Ed., 596

Jacobi vs. Alabama, 187 US, 133, 23 S. Ct., 48, 47 L. Ed., 106

Dewey vs. City of Des Moines, 173 US, 193, 199, 19 S. Ct., 379, 43 L. Ed., 665

1. (f) The section of the Florida Statutes which the Appellant contends is repugnant to the United States Constitution Amendments Five and Fourteen is set forth in Volume 13 (A), Florida Statutes Annotated, Section 337.31, to wit: *Roads Presumed to be Dedicated* (1):

> "Whenever any road constructed by any of the several counties or incorporated municipalities or by the department, shall have been maintained, kept in repair or worked continuously and uninterruptedly for a period of four years by any county, municipality, or by the department, either separately or jointly, such road shall be deemed to be dedicated to the public to the extent in width which has been actually worked for the period aforesaid, whether the same has ever been formally established as a public highway or not. Such dedication shall be conclusively presumed to vest in the particular county in which the road is located, if it be a county road, or in the particular municipality, if it be a municipal street or road or in the state, if it be a road in the state highway system or state park road system, all right, title, easement and appurtenances therein and thereto whether there

be any record of conveyance, dedication or appropriation to the public use or not.

(2) The filing of a map in the office of the clerk of the circuit court of the county in which such roads are located showing such lands and reciting thereon that they have vested in either the state, a county or municipality pursuant to the provisions of this law or by other means of acquisition, duly certified to by the director if the road involved is a road in the state highway system or state park road system, or by the chairman and clerk of the commissioners, of the county if the road involved is a county road, or by the mayor and clerk of the municipality if the road involved is a municipal road or street, shall be taken as prima facie evidence of the ownership of such lands either by the state or by the county or municipality as the case may be."

QUESTIONS PRESENTED

2. (a) UNDER THE FIFTH AMENDMENT AND THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES, CAN A STATE ENACT A VALID LAW TO APPROPRIATE PRIVATE PROPERTY FOR A PUBLIC HIGHWAY WITHOUT PROVIDING IN SUCH A LAW, FOR NOTICE AND HEARING FOR JUST COMPENSATION TO THE OWNER OF THE PROPERTY TAKEN?

2. (b) IS A STATE LAW, WHICH TAKES A CITIZEN'S PROPERTY FOR A

PUBLIC USE, VALID AND CONSTITUTIONAL WHERE THE STATE'S CONSTITUTION, AS WELL AS THE FEDERAL CONSTITUTION, SPECIFICALLY REQUIRE DUE PROCESS AND JUST COMPENSATION FOR EMINENT DOMAIN PROCEEDINGS?

STATEMENT OF THE CASE

3. (a) Your Appellants first raised the substantial federal questions at the time it filed its Bill of Complaint in the trial court; which was the Circuit Court of Monroe County, Florida. The Second Amended Bill of Complaint said in Paragraph 10, Page 3,:

> "That the Defendant, State Road Department, without any authority of law, or any judicial or legal proceedings, has taken possession of your Plaintiff's property in Old State Road # 4A, without paying just compensation to your Plaintiff, while said Defendant is without color of title through any recorded conveyance of any nature whatsoever. Said Defendant has thereby trespassed upon and taken the property of your Plaintiff without due process of law in violation of the provisions of the United States Constitution and the Declaration of Rights and the Constitution of the State of Florida and the Declaration of Rights, which were established to protect your Plaintiff and other citizens from unreasonable seizure of their property without due process of law or just compensation therefore."

The complete Second Amended Bill of Complaint, will

appear in the record on appeal, which your Appellants have requested of the Clerk, of the Third District Court of Appeal of Florida, to prepare and transmit to the Supreme Court of the United States.

3. (b) The Circuit Court, in and for Monroe County, Florida, in its Final Decree of October 28, 1964, ruled as follows:

> "2. That the Defendant is in possession and control of said right-of-way described in the Amended Complaint lawfully and is entitled to retain the same, as said land has been dedicated to the public, either by user or dedication and therefore, the Plaintiff is not entitled to any compensation for same as long as the Defendant needs, maintains, controls the same according to the Florida Statutes."

A copy of said Final Decree in its entirety, is attached hereto and made a part hereof.

The Assignments of Error in conjunction with the Appeal from the Circuit Court of Monroe County, Florida, to the Third District Court of Appeal of Florida, included an Assignment of Error as follows:

> "4.) That the lower court erred in its Final Decree of October 28, 1964, in holding for the Defendant and thereby unlawfully deprived the Plaintiff of its property without due process of law and in violation of the provisions of the Constitution of the State of Florida and the United States."

A copy of said Assignments of Error is attached hereto and made a part hereof.

In support of that Assignment of Error, your Appellant included it under Point III and stated:

> "That by the refusal of the lower court to order the Defendant, State Road Department, to commence condemnation proceedings against the Plaintiff's property, has resulted in the State of Florida, taking the Plaintiff's land without just compensation or due process of law."

This point was argued in the Brief in Pages 30 through 33. The Appellate record will include the pertinent pages of the aforesaid Appellant's Brief.

The Third District Court of Appeal, in its Opinion of September 27, 1966, wherein it affirmed the Circuit Court's Final Decree, said Opinion, said part:

> "There is substantial, competent evidence in the record to indicate that the road was constructed and completed around the year 1928, and had been continuously maintained for more than four (4) years by the road department. When the facts establish that a road has been kept in repair and worked continuously for a period of four (4) years by the State Road Department, the title thereto *vests* in the Road Department to the extent in width that the road has been worked and kept in repair. It is clear therefore, that even if there were no original deed of the land in question to the Road Department, as claimed by

> Seaside, the title to the aforesaid land has vested in the Road Department under the Statute."

This Opinion is attached hereto and made a part hereof.

After the District Court of Appeal, Third District, entered its Order of October 20, 1966, denying Re-Hearing to the Appellant, the Petition for Writ of Certiorari was filed on December 19, 1966, with the Supreme Court of Florida. This Petition for Writ of Certiorari included the substantial Federal question, Point III,:

> "That by the refusal of the lower court to order the Defendant, State Road Department, to commence condemnation proceedings against the Plaintiff's property has resulted in the State of Florida taking the Plaintiff's land without just compensation or due process of law."

Although this Federal question was appropriately and legally raised at all stages of these legal proceedings, the Supreme Court of Florida, on April 21, 1967, entered its Order denying the Appellant's Petition for Writ of Certiorari. The Appellant, in its Petition for Re-Hearing, set forth in Paragraph 2, this substantial Federal question, when it said:

> "That the Court has overlooked and failed to consider that by refusing to review and reverse the Decision of the District Court of Appeal, Third District, dated September 27, 1966, wherein said Court construed Chapter 337.31 of the Florida Statutes and found it to be a proper and

legal means of expropriating the Petitioner's property, that this is not due process of law. Your Petitioner contended in the Circuit Court, as well as in the District Court, that this Section of the Florida law is unconstitutional and in violation of the civil rights of all the citizens of the State of Florida who are affected thereby, as well as the rights of your Petitioner."

Copies of these two Petitions are attached hereto and made a part hereof, together with the Orders of the Florida Supreme Court denying relief to your Appellant.

CONCLUSION

Your Appellant submits that this Appeal brings before this Court substantial Federal questions which require plenary consideration, and therefore, it is respectfully and urgently requested that this Court assume jurisdiction of this case and permit the filing of briefs on the merits and oral argument for the resolution of the questions involved.

GUION T. DE LOACH
Attorney for Appellant
311 S. W. 27th Avenue
Miami, Florida 33135

PROOF OF SERVICE

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

I, GUION T. DE LOACH of Miami, Florida, depose and say that I did on the _____ day of October, 1967, serve a copy of the foregoing Jurisdictional Statement to the Supreme Court of the United States, on the State Road Department, Appellee, at Holland Building, Tallahassee, Florida, by mailing and affixing prepaid postage and depositing the aforesaid copies of the Jurisdictional Statement, properly sealed in an envelope and addressed to the Appellee above named, and thereafter depositing said envelope, with Air Mail postage affixed as aforesaid, in a United States mail box in the City of Miami, Florida.

_____
GUION T. DE LOACH

SWORN TO AND SUBSCRIBED before me this _____ day of _____, A.D., 1967.

_____
Notary Public, State of Florida

My commission expires:

APPENDIX

[TITLE OMITTED]

FINAL DECREE

This cause came on to be heard on the Amended Complaint filed by the Plaintiff, Answer thereto, Admissions filed by the Defendant, and other pleadings, and testimony taken before the Court together with many exhibits. The Court finds as follows:

(a) That the Plaintiff is not the owner of the land claimed which land comprises all of the right, interest and fee simple title in and to the 66' more or less described as Old State Road 4A adjacent to the land described in the Amended Complaint.

(b) That the Plaintiff is not the owner of all of the land adjacent to said claimed right-of-way as some is owned by other individuals and the Plaintiff has received only an Assignment of a chose in action and therefore in neither case can the Plaintiff claim the right-of-way even if it had been abandoned.

(c) That the property claimed has been maintained by the County of Monroe or State Road Department of Florida for a sufficient length of time prior to the filing of this suit so that the same has been dedicated to the public.

(d) That the Plaintiff is stopped from asserting ownership of said right-of-way by virtue of use by the public as a public way or road prior to and at the time of acquisition of title by Plaintiff; therefore, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. That the Plaintiff is not the owner of all the right, interest and fee simple title in and to the 66' more or less of the land described as Old State Road 4A adjacent to the lands described in the Amended Complaint.

2. That the Defendant is in possession and control of the said right-of-way described in the Amended Complaint lawfully and is entitled to retain the same as said land has been dedicated to the public either by user or dedication and therefore Plaintiff is not entitled to any compensation for same as long as the Defendant needs, maintains and controls the same according to the Florida Statutes.

3. That each party shall bear its respective costs.

DONE AND ORDERED in Chambers, at Key West, Monroe County, Florida, this 28th day of October, A. D. 1964.

Original Signed By
AQUILINO LOPEZ, JR.
Circuit Judge.

[TITLE OMITTED]

ASSIGNMENTS OF ERROR

COMES NOW the Plaintiff, SEASIDE PROPERTIES, INC., a Florida corporation, by and through its undersigned attorney and assigns the following errors to

that Final Decree of October 28, 1964, entered on October 29, 1964 in the records of the Clerk of the Circuit Court of Monroe County, Florida, A-42-178-179, and says:

1.) That the lower court erred in making and entering its Final Decree of October 28, 1964, wherein the Court held that the Plaintiff was not the owner of the land area designated as Old State Road 4-A adjacent to the land described in the amended complaint.

2.) That the lower Court erred in making and entering its Final Decree of October 28, 1964 wherein the Court held that the Dedendant, STATE ROAD DEPARTMENT OF THE STATE OF FLORIDA, had maintained the disputed land area, known as Old State Road 4-A, for a sufficient length of time prior to the filing of the suit and therefore, said land area became dedicated to the public.

3.) That the lower court erred in its order of October 28, 1964 when it found in favor of the defendant, STATE ROAD DEPARTMENT, on the basis of dedication to the public either by user or dedication, where the defendant had failed to prove its use and maintenance of said road area for the legal time period.

4.) That the lower court erred in its Final Decree of October 28, 1964 in holding for the Defendant and thereby unlawfully deprived the Plaintiff of its property without due process of law and in violation of the provisions of

the Constitutions of the State of Florida and the United States.

GUION T. DE LOACH
Attorney for Plaintiff
311 S. W. 27th Avenue
Miami, Florida 33135

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Assignments of Error was mailed to the attention of Mr. Webb of the State Road Department, Tallahassee, Florida, this 22 day of April, A.D., 1965.

GUION T. DE LOACH

[TITLE OMITTED]

Opinion filed September 27, 1966.

An Appeal from the Circuit Court for Monroe County, Aquilino Lopez, Jr., Judge.

Guion T. DeLoach, for appellant.
P. A. Pacyna, for appellee.

Before HENDRY, C.J., and PEARSON and SWANN, JJ.

PER CURIAM.

This is an appeal by the plaintiff below, Seaside Properties, Inc., [hereinafter called Seaside] from a final de-

cree for the defendant in the action, State Road Department of the State of Florida [hereinafter called Road Department].

The question at issue between the parties concerned the ownership of a section of State Road 4-A, also known as Old Dixie Highway, in Monroe County, Florida, to which Seaside claimed ownership by a deed dated September 26, 1951, and by virtue of adverse possession for more than seven years. The trial court found that title to the property in question was vested in the Road Department. This appeal followed.

The Road Department contends that it was the owner of the land in question under the provisions of Section 337.31, Florida Statutes, inasmuch as it had maintained the same for more than four years.

Section 337.31(1) provides as follows:

> "Whenever any road constructed by any of the several counties or incorporated municipalities or by the department shall have been maintained, kept in repair or worked continuously and uninterruptedly for a period of four years by any county, municipality, or by the department, either separately or jointly, such road shall be deemed to be dedicated to the public to the extent in width which has been actually worked for the period aforesaid, whether the same has ever been formally established as a public highway or not. Such dedication shall be conclusively presumed to vest in the particular county in which the road

> is located, if it be a county road, or in the particular municipality, if it be a municipal street or road, or in the state, if it be a road in the state highway system or state park road system, all right, title, easement and appurtenances therein and thereto, whether there be any record of conveyance, dedication or appropriation to the public use or not."

There was substantial competent evidence in the record to indicate that the road was constructed and completed around the year 1928, and had been continuously maintained for more than four years by the Road Department. When the facts establish that a road has been kept in repair and worked continuously for a period of four years by the State Road Department, the title thereto *vests* in the Road Department to the extent in width that the road has been worked and kept in repair. It is clear, therefore, that even if there were no original deed of the land in question to the Road Department, as claimed by Seaside, the title to the aforesaid land has vested in the Road Department under the statute. See: Bridgehead Land Co. v. Hale, 1940, 145 Fla. 389, 199 So. 361; and Palm Beach County v. South Florida Conservancy Dist., 1936, 126 Fla. 170, 170 So. 630.

Seaside contends in the alternative, that even if the Road Department were the owner of the land in question, the evidence proves that it has (1) abandoned the same; or (2) that Seaside has acquired title to the land by reason of adverse possession.

The question of abandonment and non-use was re-

solved adversely to Seaside by the trial court, although there was conflicting evidence concerning the same. The question is based primarily on a statement of an engineer for the Road Department that the road had been abandoned, and other evidence that would show an abandonment.

In 25 Am.Jur. Highways § 111, it is stated:

> "The ancient maxim, 'once a highway, always a highway,' which has frequently been quoted by the courts, is subject to many exceptions and qualifications. In so far as the rights of the public are concerned, the existence of a highway may be terminated by formal action by the public authorities having power and jurisdiction for such purpose, or according to the rule applied in most jurisdictions, by abandonment, either by unequivocal acts showing a clear intention to abandon or by nonuser. * * * *A highway cannot be permanently closed or discontinued by the public authorities without compliance with the procedure prescribed by statute, or by public officials who do not possess authority for such purpose. Nor, as a rule, can the existence of a highway be terminated by the acts of abutting owners.* * *"
> (Emphasis supplied)

A statement of an employee for the Road Department is insufficient to prove or show an intent to abandon. Section 336.09, Florida Statutes, provides that the Board of County Commissioners may close an existing public street, road, or highway by following certain procedures.

If the statutory procedure is not followed, the road is not abandoned nor closed. Baskin v. State ex rel Tracy, 1934, 115 Fla. 392, 155 So. 655; Dade County v. Snyder, 1939, 140 Fla. 135, 191 So. 185. There is no statutory provision by which the Road Department may close or abandon a highway, and being a creature of statute, it has only those rights and privileges given to it by statute.

The State is authorized to convey property no longer needed for road purposes by conveyances which must be signed by the Chairman of the State Road Board of Florida and attested to by the Secretary. Section 334.12(2)(b), Florida Statutes, further provides that no action taken by the State Road Department shall be binding unless the same is taken in an open meeting and is reflected by the minutes. There was no showing that the Road Department had taken any action to abandon the road, and we do not find that the trial court was in error in determining that there was insufficient evidence to prove abandonment of the road by the Road Department.

Turning next to the contention by Seaside that they have established ownership of the land in question by adverse possession, we observe that in 3 Am.Jur.2d Adverse Possession § 207, there is contained the following statement:

> "Before it becomes material whether possession of a street, highway, park, square, or the like is adverse, the particular governmental body against whom the right is asserted must be subject to the running of the statute of limitations; the federal and state governments are not generally subject to the statute, and the tendency

> is to regard other governmental subdivisions in the same light, at least in regard to property held for public use. It is therefore a widely accepted general rule that the statute of limitations does not run in favor of those who occupy property of this character, and that no title can be acquired thereto by such occupancy, no matter how long it has been continued and whatever may have been its character. So, it has been held that the rights of the public in its highways cannot be lost by acquiescence in the use or occupation thereof by individuals, even though such highways have not been opened or used."
>
> * * *

The Supreme Court of Florida has chosen to follow the great weight of authority in the case of Waterman v. Smith, Fla.1957, 94 So.2d 186, where it was held, generally, "that adverse possession of property held by a city for the use of the public cannot ripen into a prescriptive title."

Therefore, it is our finding that there was substantial competent evidence to sustain the finding of the trial court that the Road Department had acquired legal title to the land in question; that there was insufficient proof to constitute an abandonment by the Road Department of its right, title and interest in the land in question; and that the final decree was correct in the denial of the claim of adverse possession on the part of the plaintiffs.

For the reasons stated, the final decree be and the same is hereby

Affirmed.

[TITLE OMITTED]

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL THIRD DISTRICT

TO THE SUPREME COURT OF THE STATE OF FLORIDA:

The Petitioner, SEASIDE PROPERTIES, INC., a Florida corporation, presents this, their Petition for Writ of Certiorari and states:

1. Your Petitioner seeks to have reviewed a decision of the District Court of Appeal, Third District, dated September 27, 1966 and filed in the records of the District Court on the 27th day of September, A.D., 1966 in Minute Book 19, page 35. (TR. 1)

2. This Petition is presented under and pursuant to Article V, Sec. 4 (2) of the Florida Constitution and Florida Appellate Rule 4.5 c (6) (3).

3. This Petition is accompanied by a transcript of part of the record of the proceedings including the decision the Petitioner seeks to have reviewed, together with a supporting brief for invoking the jurisdiction of the Florida Supreme Court.

4. The following are the facts of the case:

a. The Petitioner is the record title owner of two large adjoining subdivisions entitled "Seaside", Plat Book 1, page 97, and "Seaside Addition", Plat Book 3, page 59, lying and being in Key Largo, Monroe County, Florida. (TR. 67-68)

b. The record ownership of the Petitioner is deraigned from a patent from the United States Government to the Petitioner's predecessor in title, ultimately vesting fee simple title in the Petitioner by recorded deed in the Public Records of Monroe County, Florida. This record ownership was evidenced to the trial court by two abstracts of title.

c. The land area involved in this dispute with the Respondent is a strip approximately 1,396 feet long and 66 feet wide which traverses the Petitioner's property and is designated as "Old Dixie Highway" in Plat Book 1, page 97, and is commonly called State Road 4A. This highway is not designated on the Petitioner's other plat known as Seaside Addition No. 1, Plat Book 3 at page 59. (TR. 67-68)

d. The Respondent is a political subdivision of the State of Florida and has admitted that it does not possess or claim Old Dixie Highway or 4a under any recorded deed, grant or easement and that its pretense to title is founded upon Florida Statute 337.31 (1).

e. Early in 1957 one of the Respondent's agents orally informed the President of the Petitioning corporation that the Petitioner was required to remove one of its concrete subdivision signs from the alleged right-of-way of Old State Road 4A. (TR. 65)

f. The Petitioner then sought to quiet the title to this disputed land area and brought its action in the Circuit Court of Monroe County by a Bill of Complaint to Quiet Title and for Temporary Injunction against the Respondent, naming Monroe County as a co-Defendant,

which action was filed on or about March 11, 1957. On March 19, 1957 the Circuit Court issued a Temporary Restraining Order against the Respondent, however, this Order was ignored and the Petitioner's signs were torn down and removed by the Respondent's employees. (TR. 13)

g. The Co-Defendant, Monroe County, filed a Disclaimer of Title to this road area on October 11, 1957. (TR. 61)

h. While this case was pending before the Circuit Court of Monroe County, Florida, on February 25, 1958, the Circuit Court entered a Decree quieting the title against the State Road Department in favor of numerous defendants in the case cited at *12 Fla. Sup., Price* vs *State Road Department.* (TR. 74) Despite the favorable ruling for local landowners of Monroe County against the Respondent, nevertheless, on January 20, 1959 the lower court entered an Order dismissing the Petitioner's Complaint with prejudice compelling the Petitioner's to take an appeal to the District Court of Appeal, Third District. This dismissal was predicated upon the legal grounds that the Petitioner did not have a right to quiet the title against the Respondent because of sovereign immunity.

i. On Appeal, the District Court of Appeal, Third District, on June 6, 1960 entered an Order reversing the Chancellor and directing him to enter an Order permitting the Petitioner's to file an Amended Complaint for Inverse Condemnation. This opinion is found in *121 So.2d 204*. On June 23, 1960 the Mandate from the aforesaid Appellate Court was issued to the lower Court and yet, despite repeated efforts by the Petitioner to have the lower

court enter an Order in compliance with the aforesaid Mandate, it was more than 13 months before the lower Court did enter such an Order permitting your Petitioner to file its Amended Complaint. This Order was entered July 20, 1961. (TR. 72)

j. The Respondent filed its Answer, which consisted of an affirmative defense of construction and maintenance pursuant to Florida Statutes 337.31 (1), and a matter of estoppel because the Petitioner had actual or constructive notice of the use of Old Dixie Highway, also known as State Road 4A.

k. On July 9, 1962 a Final Hearing was held in this matter and was ultimately concluded on September 19, 1962.

l. At these two hearings your Petitioner produced some 23 pieces of documentary evidence and 6 witnesses, all of which conclusively proved that the ownership of the two subdivisions across which the disputed road traverses; and further conclusively proved the abandonment, non-use of Old Dixie Highway, also known as State Road 4A through the testimony of the Chairman of the Monroe County Commission acting as Chairman of the Road Department, who was Harry Harris; (TR. 33-38) the long-time resident, Malcolm Rodney Albury, who had lived near the disputed land area since 1918 (TR. 27-30); a former justice of the peace as well as a real estate developer, Charles Marvin Thompson (TR. 31-33) who lived in the area since 1916; the Chairman of the Board of the Florida Keys Electric Cooperative Association, Eugene L. Lowe, who had lived in the Key Largo area since 1918 (TR. 39-45); and none of these witnesses were impeached

or their testimony rebutted in any manner whatsoever by the Respondent. In essence, the testimony of the witnesses was to the effect that the road area in question became impassable, and had not been maintained by either the State Road Department or the County Road Department since the opening of parallel U. S. 1 on or about 1943. None of these witnesses testified as to any facts concerning construction or maintenance of this road by either the county or the State Road Department.

m. The Defendant, for its part of the case, produced some 32 pieces of documentary evidence. However, 26 of this number consisted of deeds between various individuals in the subdivision of Seaside and Seaside Addition No. 1, and were clearly irrelevant and immaterial and failed to support the Respondent's affirmative defense in any way whatsoever. The Respondent filed a so-called "Maintenance Map", made up and filed three days after the Petitioner had filed its initial suit to quiet title against the Respondent. The Respondent's other exhibits consisted of Plat Book 2, page 10, which was a revised Plat of Seaside, and the legend indicated the Plat had been filed to reduce the lots to acreage during the depression years of 1934. Two additional exhibits were depositions, one of Homer P. Williams, Engineer for the Respondent, and the other of J. P. Vansant, a District Right-of-way Engineer for the Respondent. (TR. 8-13; 13-23) Both of these States witnesses testified as to the *non-existence* of maintenance records and to the *non-existence* of any records concerning construction on State Road 4A. In fact, J. P. Vansant testified that the road area in question had been abandoned and further identified the Bell Disclaimer which was a portion of Old State Road 4A disclaimed by the State Road department on May 28, 1946, which was filed in Monroe

County Records Deed Book G-24, page 46. Mr. Vansant further testified that there were no records of any deed or conveyance of any nature to the Respondent of the land area in question.

n. Your Petitioner, on the other hand, introduced excerpts from the Monroe County Commission which set forth the closing of various portions of Old Dixie Highway in 1943 and 1944. In addition, photographs were introduced showing the removed bridges as well as the impassability because of overgrowth and broken pavement on Old Dixie Highway in the vicinity of the Petitioner's property. (TR.

o. This, then, was the sum total of the evidence produced in the Circuit Court, which comprised the record on appeal to the District Court of Appeal, Third District.

p. While the trial was concluded on September 19, 1962 a Final Decree was not entered in this cause until *October 28, 1961*. The entry of the decree at that time was accomplished because the Petitioner was compelled to file a Mandamus in the Supreme Court of Florida directing the Respondent Chancellor to enter a Decree in this cause. Just prior to the hearing before the Supreme Court on the Mandamus Petition, the Chancellor did enter the erroneous Final Decree and the Mandamus suit was terminated. (TR.

q. The Notice of Appeal was filed and Assignments of Error were also filed taking issue with the findings and rulings of the lower court.

5. On the foregoing facts, the District Court of Appeal, Third District, was presented with the following points of law:

POINT I

THAT THE DEFENDANT, STATE ROAD DEPARTMENT, WHOLLY FAILED TO PROVE ANY RIGHT, TITLE OR CONTROL TO THE DISPUTED LAND AREA WHICH LIES WITHIN THE PLAINTIFF'S SUBDIVISIONS EITHER BY DEED OR A STATUTORY DEDICATION. (Assignments of Error 2 and 3)

POINT II

THAT THE PLAINTIFF PROVED CONCLUSIVELY THAT IT WAS THE LEGAL OWNER AND WAS THEREBY LAWFULLY ENTITLED TO THE ENTIRE LAND AREA DESCRIBED AS "OLD DIXIE HIGHWAY" EMBRACED WITHIN THE TWO SUBDIVISIONS OWNED BY THE PLAINTIFF. (Assignments of Error 1)

POINT III

THAT BY THE REFUSAL OF THE LOWER COURT TO ORDER THE DEFENDANT, STATE ROAD DEPARTMENT TO COMMENCE CONDEMNATION PROCEEDINGS AGAINST THE PLAINTIFF'S PROPERTY HAS RESULTED IN THE STATE OF FLORIDA TAKING THE PLAINTIFF'S LAND WITHOUT JUST COMPENSATION OR DUE PROCESS OF LAW. (Assignments of Error 4) (TR. 5)

a. On the first point of law, the District Court of Appeal, Third District, rendered the following opinion:

> "The question at issue between the parties concerned the ownership of a section of State Road 4A also known as Old Dixie Highway in Monroe County Florida - - The Road Department contends that it was the owner of the land in question under the provisions of Section 337.31, Florida Statutes. - - - There was substantial competent evidence in the record to indicate that the road was constructed and completed around the year 1928 and had been continuously maintained for more than 4 years by the Road Department. - - It is clear, therefore, that even if there were no original deeds of land in question to the Road Department as complained by Seaside, the title to the aforesaid land invested in the State Road Department under the statute. - - -" (TR. 1)

6. This same point of law was involved in the case of *Downing* vs *Bird*, 100 So2d 57, Sup. Ct. 1958. In that case the City of Homestead offered proof of construction and maintenance to the street in question through 4 witnesses, one of whom did not know who paved the street or the date it had been paved, but stated that it had been paved over 5 years. The other witnesses were about the same in their testimony as to the paving and maintenance of the road. The Court held in that case, on page 64:

> "Further, in either prescription or adverse possession, the use or possession is presumed to be in subordination to the title of the true owner,

and with his permission the burden is on the claimant to prove that the use or possession is adverse. The essential element, as well as all others, must be proved by clear and positive proof and cannot be established by loose, uncertain testimony which necessitates a resort to mere conjecture. - -

In Florida there is no presumption that adverse possession once shown to exist continues to do so. The Claimant must by clear, definite and accurate proof show that the possession continued for the full period required by law. - -

Also, - - the limits, location and extent of his occupation must be definitely and clearly established by affirmative proof and cannot be established or extended by presumption. - -

Any doubts as to the creation of the rights must be resolved in favor of the owner.

- - Under the principals of law above, as set forth in the cases and authorities cited, it was necessary for the Defendants to allege and by clear and positive proof to prove: (1) that the public had the continued and uninterrupted use or enjoyment of the Plaintiff's lands for a period of at least 20 years prior to the barricading thereof by the Plaintiff's husband in February of 1952; (2) the identity of the roadway, i.e., its route, termini and width, and (3) that the use or enjoyment was adverse or under claim of right."

a. Other cases supporting Petitioner's contention of conflict of decisions, thereby showing jurisdiction in the Supreme Court of Florida, are set forth in the accompanying brief.

b. From the facts and evidence in the case at bar, the District Court of Appeal, Third District, found that the Old Dixie Highway had been constructed in 1928 (although there was no positive proof offered on this point) and if this fact were true, prescriptive period would not have run until 1948. It was admitted that the U. S. 1 highway surplanted Old Dixie Highway as the overseas route, and that the bridges on Old Dixie Highway were removed, and all maintenance ceased. (TR. 13-23)

c. Both the Chancellor in the Circuit Court and the District Court of Appeal, Third District ruled that the respondent had title to the 66 feet although the proof from both the Plaintiff and the Defendant was to the effect that the road width was 14 to 16 feet prior to 1960 and in 1960 the Respondent added an additional footage to the pavement, making it approximately 18 feet. There are no ditches or culverts on either side of this roadway and this Petitioner has an office building constructed up to the edge of the existing pavement. (TR. 13-23; 33-38; 45-59)

d. In the case of *Grenell* vs *Scott*, DCA 2d 1961, 134 So2d 866, the facts of which are that the litigants involved in an action for reestablishing of a public road and the Chancellor in that case was reversed because the evidence failed to meet the test as set forth in *Downing* vs *Bird*, Supra, and the Court said:

Page 869:

"There is no evidence in the record here of any width that was actually used for shoulders and ditches. The record in this case does not bring this case within the purview of Sec. 337.31 F.S.A., pertaining to public maintenance of a road."

7. **POINT II**

THAT THE PLAINTIFF PROVED CONCLUSIVELY THAT IT WAS THE LEGAL OWNER AND WAS THEREBY LAWFULLY ENTITLED TO THE ENTIRE LAND AREA DESCRIBED AS "OLD DIXIE HIGHWAY" EMBRACED WITHIN THE TWO SUBDIVISIONS OWNED BY THE PLAINTIFF. (Assignment of Error 1) (TR. 5)

a. The opinion of the District Court of Appeal, Third District of September 27, 1966 wherein the District Court of Appeal said:

"The question of abandonment and non-use was resolved adversely to Seaside by the trial court, although there was conflicting evidence concerning the same. The question is based primarily upon a statement of an engineer for the Road Department that the road had been abandoned and other evidence that would show abandonment. - - - A statement of an employee for the Road Department is insufficient to prove or show an intent to abandon.'"

This holding on the part of the District Court of Appeal, Third District, is in conflict with the case of *Montgomery Ward & Co. Inc.* vs *Rosenquist*, DCA 2d, 1959, 112 So2d 885. The facts of the case are that this was an action for injuries sustained by a customer in a fall at a store. The Circuit Court permitted a statement of the assistant manager of the Defendant concerning a sign on the door at the time of the accident as being admissible, and when the Defendant appealed, the decision of the Circuit Court was affirmed, saying; page 886:

> "The Courts of this country are somewhat in conflict on the question of whether an agent's statements, which are vicarious admissions against the interest of his principal, are admissible in evidence in an action against the principal by a third party. If such an admission were made by the principal himself, it would be clearly admisible as an exception to hearsay rule.- - A second rule will allow the agent's admission if the statement concerned a matter within the scope of his agency and was made before the termination of the agency. - - It is this second rule, in view of the Florida holdings, with which we are concerned.
>
> In *Myrick* vs *Lloyd*, 158 Fla. 47, 27 So2d 615, 616, we think the Supreme Court of Florida has answered one phase of the Defendants' question. - - - The Supreme Court held that the son was the agent of the father and the statements of admission made to the parents was admissible

against the father. The Court said in part as follows:

> 'The best authority to our mind is found in Wigmore on Evidence, Vol. IV, Sec. 1078, page 119:
>
> 'He who sets another to do an act in his stead as agent is chargable in substantive law by such acts as are done under that authority; so to, properly enough, the admissions made by the agent in the course of exercising that authority have the same testimonial value to discredit the parties claim as if stated by the parties himself.' "

b. Other cases and law on this point of conflict will be set forth in the accompanying brief.

c. The District Court of Appeal, Third District, felt that there was conflicting testimony on the point of ownership of this property, but has failed to set forth what affirmative evidence the Respondent showed in order to prove title to the Old Dixie Highway. The Petitioner's proof was positive, direct and documented not only by deeds but by astracts of title reflecting the chain from the United States Government down through various title-holders into the Petitioner, and nowhere in this chain of title was there a deed or grant to the Respondent. For the District Court of Appeal, Third District, to hold that an oral claim by the Respondent constitutes title is in conflict with the substantive law of the State of Florida.

F.S.A. 689.01, "How Real Estate Conveyed":
"No estate or interest of freehold or for term of more than one year, or any uncertain interest of, in or out of any messuages, lands, tenements or hereditaments, shall be created, made, granted, transferred or released in any other manner than by an instrument in writing signed in the presence of two subscribing witnesses by the parties creating, making, granting, conveying, transferring or releasing such estate or interest or term, of more than one year, or by his agent thereunto lawfully authorized. - - - - - - -."

d. Other cases supporting this point of conflict will be adduced in the brief accompanying this Petition.

8. **POINT III**

THAT BY THE REFUSAL OF THE LOWER COURT TO ORDER THE DEFENDANT, STATE ROAD DEPARTMENT TO COMMENCE CONDEMNATION PROCEEDINGS AGAINST THE PLAINTIFF'S PROPERTY HAS RESULTED IN THE STATE OF FLORIDA TAKING THE PLAINTIFF'S LAND WITHOUT JUST COMPENSATION OR DUE PROCESS OF LAW. (Assignment of Error 4) (TR. 5)

Neither the trial court nor the District Court of Appeal made any direct ruling on the Petitioner's claim that he had suffered the loss of his property without due process of law or without compensation, in violation of the United States Constitution and the Declaration of Rights of the Florida Constitution, and this claim was made in para-

graph 10 of the Petitioner's Second Amended Complaint for Inverse Condemnation. (TR. 62)

a. Both the trial court and the District Court of Appeal, Third District, have, by their inaction or ignoring of the Petitioner's claim, in violation of his rights, acted in conflict with the Florida Constitution, Declaration of Rights, Sec. 12; - - - - "Due process of Law; eminent domain":

> "No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken without just compensation."

b. In *Pocock* vs *Town of Medley*, Sup. Ct. 1956, the facts of that case were that the Town officers sought to enjoin the defendants from interfering with the town's use of a 60 foot wide right-of-way for public road across the Defendant's land. The Circuit Court held for the town declaring that the land was a public road by Order of the County Commissioners according to a layout proceeding. The opinion was reversed and the Supreme Court said: (page 165)

> "In the absence then, of any showing of dedication, grant, release of a taking by condemnation proceedings of the strip of land in question, the town has no right to use it for road purposes without compensating the Pococks therefor. - - Property unlawfully taken without compensation is not public property until it is paid for or until the

right to recover compensation for it is lost or abandoned."

c. Other supporting cases and law will be cited in the accompanying Brief showing this conflict of decisions.

9. The decision of the District Court of Appeal, Third District, which Petitioner seeks to have reviewed is in direct conflict with the above mentioned decisions of the Supreme Court and the other District Courts of Appeal. Because of the reasons and authorities set forth in Petitioner's brief, it is believed that the decision hereby sought to be reviewed is erroneous and that the conflicting decisions of the other District Courts of Appeal and the Supreme Court are the correct decisions and should be approved by this Court as the controlling law for the State of Florida.

WHEREFORE, your Petitioner requests that this Court grant a Writ of Certiorari and enter its Order quashing the decision and Order hereby sought to be reviewed, approving the decisions of the other District Courts of Appeal and the Supreme Court as the correct decisions, and granting such other and further relief as shall seem right and proper to the Court.

Respectfully submitted,

GUION T. DE LOACH
Attorney for Petitioners
311 S. W. 27th Avenue
Miami, Florida 33135

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Petition for Writ of Certiorari was mailed to P. A. PACYNA, Attorney for Respondent, STATE ROAD DEPARTMENT OF THE STATE OF FLORIDA, this_____day of December, A.D., 1966.

_____

GUION T. DE LOACH

[TITLE OMITTED]

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdicitonal briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

A True Copy
TEST:
Sid J. White
Clerk Supreme Court.
(Court Seal)

By: _____, Chief Deputy Clerk.

CC: Hon. W. P. Carter
Hon. Earl R. Adams
Hon. Guion T. De Loach
Hon P. A. Pacyna

[TITLE OMITTED]

PETITION FOR REHEARING

Comes now the Petitioner, by and through its undersigned attorney, and pursuant to Florida Appellate Rule 3.14, respectfully petitions the Court for a rehearing on its Order of April 21, 1967, wherein this Honorable Court refused to review a Decision of the District Court of Appeal, Third District of Florida, dated September 27, 1966.

1. That the Court has overlooked and failed to consider the fact that the Circuit Court of Monroe County, as well as the District Court of Appeal, Third District, has aided, abetted and permitted an agency of the State of Florida to appropriate the property of your Petitioner without due process of law or compensation, which is in direct violation of Section 12 of the Florida Constitution Declaration of Rights, as well as the Constitution of the United States.

2. That the Court has overlooked and failed to consider that by refusing to review and reverse the Decision of the District Court of Appeal, Third District, dated September 27, 1966, wherein said Court construed Chapter 337.31 of the Florida Statutes and found it to be a proper

and legal means of expropriating the Petitioner's property, that this is not due process of law. Your Petitioner contended in the Circuit Court, as well as in the District Court, that this Section of the Florida law is unconstitutional and in violation of the civil rights of all the citizens of the State of Florida who are affected thereby, as well as the rights of your Petitioner.

3. That this Court further failed to consider and overlooked the fact that the decision of the Circuit Court of Monroe County and the District Court of Appeal, Third District, said Decision being dated September 27, 1966, were in direct conflict with other Decisions of the Supreme Court and other District Courts of Appeal on the question of the burden of proof required of the State Road Department in asserting its rights under Chapter 337.31 of the Florida Statutes.

4. That your Petitioner further contends that the Court has failed to consider and overlooked the numerous cases heretofore decided by the Supreme Court and the other District Courts of Appeal that by upholding the Decision of the District Court of Appeal, Third District, dated September 27, 1966, will have an adverse affect upon the orderly administration of the laws of the State of Florida and throw the standard of the burden of proof into a state of confusion, as well as establishing a dangerous precedent in permitting a state agency to ride rough-shod over the individual citizen of the State of Florida.

5. That this Court has overlooked and failed to consider that the sacred principle in constitutional safeguards has been grossly abused and violated in the instant case,

and has further failed to consider the peculiar circumstances and facts attendant in the instant case and the administration of justice therein.

CONCLUSION

It is respectfully urged that the Court review again the Petition for Writ of Certiorari and the supporting Briefs filed therein, together with the Appendix of the pertinent portions of the transcript. The contents of said pleadings conclusively show the wrongs that have been perpetrated upon your Petitioner by the courts below.

WHEREFORE, it is respectfully prayed that the Court review its Order of April 21, 1967, as well as the aforesaid Certiorari papers, and that in the interests of upholding constitutional government and law, this Court take jurisdiciton of this matter and render an appropriate Decision and grant your Petitioner the proper justice and equity which are long overdue your Petitioner.

Respectfully submitted,

GUION T. DE LOACH
Attorney for Petitioner
311 S. W. 27th Avenue
Miami, Florida 33135

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Rehearing was mailed to P. A. PACYNA, Attorney for Respondent, State Road Department of the State of Florida, Holland Building, Tallahassee, Florida, this 4 day of May, 1967.

GUION T. DE LOACH

[TITLE OMITTED]

On consideration of the Petition for Rehearing filed by Attorney for Petitioner,

IT IS ORDERED by the Court that said petition be, and the same is hereby, denied.

A TRUE COPY,
TEST:
SID J. WHITE
CLERK SUPREME COURT
(COURT SEAL)

(I HAVE TODAY MAILED TO THE CLERK OF THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, ORDER OF APRIL 21, 1967, IN THE ABOVE CAUSE)